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ABSTRACT

The history of college desegregation and federal funding to higher education is reviewed. Both the Morrill Act of 1890 and Title VI of the Civil Rights Act of 1964 fused the issues of federal aid and racial discrimination in higher education. Although the basic legal standards formulated in the decision in Brown v. Board of Education of Topeka and the 1977 Amended Criteria for Acceptable State Higher Education Desegregation Plans remain in place, the extent to which the legal right can be exercised is crucially dependent on the kind and level of federal involvement. The federal government not only has defined the constitutional requirements and assumed responsibility for their enforcement, but has also affected the degree to which black colleges may offer high quality programs for all students and the extent to which black students may take full advantage of opportunities in public higher education. It is suggested that by examining the past interaction between college desegregation and federal aid, those concerned with maximizing educational choices for all students may be better able to consider legislative and judicial strategies for the coming decade. It is suggested that while vastly improving the access of low-income minority students to higher education, federal aid has yet to alter significantly the institutional aspects of desegregation with which the executive branch and the federal courts have also been concerned. Before the Brown decision in 1954, the executive branch was involved in the related issues of college segregation and federal aid in two ways: administration of the land-grant statutes and collection of information on institutions of higher education receiving federal appropriations. The developments resulting from the Adams v. Richardson suit, the Higher Education Act of 1965, the Education Amendments of 1972, and other legislation and cases are reviewed. (SW)

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by Jean Preer

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College Desegregation and Federal Aid

by Jean Preer

Decisions by the federal government which affect desegregation in public higher education have been characterized by fragmentation and inconsistency. Although college desegregation is generally regarded as a legal issue involving state systems of higher education, the nature of the problem and the extent of successful desegregation have been critically influenced by the allocation of federal funds. Desegregation in higher education embraces both legal and educational issues. The power of Congress to appropriate funds and to define the conditions under which funds may be granted or withheld affects both the ability of the executive branch to enforce the law and of the federal judiciary to interpret it. Before the Brown decision[1] in 1954, federal funding helped create and perpetuate separate, unequal black and white land-grant colleges; the executive branch played a limited, generally informational role in higher education; lawsuits seeking equality of educational opportunity were pursued in state courts. Since Brown, federal aid to higher education has increased and shifted direction, but its impact on desegregation has scarcely been considered. The failure of Congress to consider the possible financial repercussions of its civil rights bills and the potential legal implications of its aid to education bills has produced unexpected complexities, as well as benefits, for the college desegregation process. While vastly improving the access of low-income minority students to higher education, federal aid has yet to alter significantly the

institutional aspects of desegregation with which the executive branch and the federal courts have also been concerned.

Congress has been involved in the problem of segregation in higher education at least since the passage of the Second Morrill Act of 1890.[2] It is frequently noted that legislation which increases the level of federal financial assistance to higher education is usually justified by some other national priority. In the case of the Second Morrill Act, Congress sought to expand the benefits of agricultural and mechanical instruction and incidentally to involve black students in the land-grant movement. Lack of specificity has also characterized congressional involvement in federal aid to higher education. The 1890 Morrill Act required a just and equitable distribution of federal funds between black and white land-grant colleges, but left the division to each state legislature with the approval of the Secretary of the Interior. Despite active lobbying efforts by black educators and civil rights groups, subsequent land-grant legislation did not contain the just and equitable distribution requirement which ensured the participation of black colleges and black students.[3] Until recently, Congress overlooked the way in which black land-grant colleges, a by-product of congressional action, received practically no federal land-grant monies, unless specifically included.

Two additional patterns involving federal aid and legal equality were established well before the Brown decision. The first was, that despite the land-grant acts, higher education remained primarily a state responsibility whereas elementary education might be a federal concern. The second was the fear that federal funding for higher education would necessarily

entail federal control. Chester Finn has observed that this fear of federal control has prevented educators from favoring a more comprehensive policy toward higher education.[4] In the 1930s, this dual perspective was nicely illustrated in testimony on bills proposing federal aid to public schools to reduce the educational inequalities between rich and poor states. These bills, which were strongly backed by the National Education Association, attracted widespread attention in the press and generated lively debate.[5] Black educators and civil rights leaders sought to modify these bills to guarantee funds for Negro schools in segregated states and to require that all schools in a state receiving aid have at least a 160-day school year.

Testifying on behalf of the NAACP, in 1939, attorney Charles H. Houston endorsed federal aid to public elementary and secondary schools provided Negro participation was specifically protected. Houston believed that, as a result of NAACP suits involving higher education, states would be forced to spend larger sums to equalize separate public colleges and graduate programs. Federal aid, he suggested, could replace state funds thus diverted from elementary and secondary schools.[6] Houston maintained that higher education was properly a state function, and, in an article in the Journal of Negro Education, warned against overreliance on the federal government lest an unsympathetic administration gain office.[7]

The inability of Congress in the late 1930s to pass any legislation for federal aid to education also illustrates the important role of the executive branch in the decision-making process. Hopes for passage of the Harrison-Black-Fletcher bill, which had been approved unanimously by the Senate Committee on

Education and Labor, were dashed by the failure of President Roosevelt to endorse it.[8] In theory, Roosevelt supported both education and federal aid to eliminate educational inequalities. In 1937, however, Roosevelt was in the midst of a drive to balance the federal budget, and let Democratic congressional leaders know that he did not favor new federal initiatives in the field of education.[9] Then, as now, in budgetary wars, education is the first casualty.

Before the Brown decision, the executive branch was involved in the related issues of college segregation and federal aid in two ways: administration of the land-grant statutes and collection of information on institutions of higher education receiving federal appropriations. The gathering and dissemination of accurate information, particularly on black higher education, have long been accepted as a legitimate function of the federal government.[10] During the decades of legal segregation, sanctified by Congress in 1890 Morrill Act, and by the Supreme Court in Plessy v. Ferguson,[11] the Bureau of Education received annual reports, conducted surveys, and issued its own reports documenting statistically the woeful condition of separate black public colleges. Early efforts of the Bureau centered on assuring that the 1890 black land-grant colleges spent their federal money according to the law and on increasing private support of black higher education. The mammoth study, issued in 1917, conducted by Thomas Jesse Jones with the support of the Phelps-Stokes Fund, meant to provide philanthropists sufficent information on various black schools to guide their giving to worthy institutions.[12]

By the 1930s, however, parts of the executive branch had

gone beyond this information function to take substantive positions on both federal aid and segregation. In 1934, under the guidance of Ambrose Caliver, black education specialist in the Office of Education, a conference on Fundamental Problems in the Education of Negroes had declared its opposition to the extension of segregation and its support of federal aid to education.[13] President Roosevelt's Advisory Committee on Education had recommended that bills for federal aid to education include just and equitable distribution clauses to ensure Negro participation.[14] This pattern of involvement continued in the 1940s. Ambrose Caliver's National Survey of the Higher Education of Negroes, in 1942, documented both the tangible shortcomings and intangible strengths of black colleges.[15] President Truman's Commission on Higher Education, in 1947, both opposed segregation and favored increased funds to improve separate Negro schools.[16]

Even though federal aid has been involved in separate black and white public higher education at least since 1890, no lawsuit against the federal government aimed at the racially discriminatory distribution of federal aid has been undertaken before or since Brown. The possibility of such a suit has been considered, however. In his 1930 report to the NAACP, attorney Nathan Margold considered briefly the distribution of land-grant funds. Even though black land-grant colleges had received practically no money under any of the land-grant acts except the Morrill Act of 1890, and amending statutes, Margold found no basis for a suit against the Secretary of the Interior.[17] In 1948, attorneys Herbert O. Reid and James M. Nabrit reexamined this question and described a number of situations in which a suit against the federal government seemed promising.[18]

Nevertheless, the NAACP continued to aim its suits at state officials who governed separate, unequal black and white public colleges.

Even in early higher education desegregation suits, however, when the ultimate goal was the elimination of the separate-but-equal doctrine as a legal principle, funding was the hidden issue on the agenda of both sides. Often the black public college, whose offerings and facilities were at issue, was one of the 1890 land-grant schools. The NAACP's earliest successful suit in higher education, Pearson v. Murray,[19] involved the Princess Anne Academy, a two-year Negro land-grant college, which because it was technically part of the University of Maryland, had not even received 1890 funds until a state law revision in 1933.[20] The NAACP hoped to make the maintenance of separate educational facilities so expensive that white state universities would be forced to admit black students. Because the financial disparities tended to be discussed in terms of unequal educational opportunities rather than in specific demands for equal per capita endowments and capital expenditures, states were able to comply cheaply with makeshift programs and facilities. Furthermore, per pupil operating expenditures at separate Negro schools tended to be high because of low enrollments. Where qualified black students applied to programs where separate facilities would require high levels of capital investment, particularly medical schools, they were often quietly admitted without a lawsuit. In successful desegregation suits, where black students were admitted to white universities, the black public college received no sustained increase in funds beyond the money hastily injected to forestall desegregation, although most black students continued to enroll there.

Finances were also an issue in the wake of the Brown decision, when the Supreme Court had established the right of black students to attend white colleges (and the right of white students to attend black ones.) The continued enrollment of students by race at white and black public colleges reflected a combination of forces: racial intransigence among southern state officials, social customs of both blacks and whites, the inadequate preparation of many of the graduates of segregated, Negro elementary and secondary schools, and the limited financial resources of many black students. During this transition period, college desegregation was narrowly defined: the admission of a single, qualified black student to a formerly segregated white state university. Black public colleges continued to provide educational opportunities for black students in the decade following Brown.

In the late 1950s and early 1960s, Congress followed patterns it had already established toward federal aid to higher education in general and toward black higher education in particular. Passage of the National Defense Education Act of 1958 illustrated both.[21] Although the act provided fellowships for graduate students in science, mathematics and foreign languages, and long-term, low-interest loans for needy undergraduates, it was justified as an adjunct to national security rather than as assistance to higher education per se.[22] Since its educational aspect was already a secondary consideration, the legislation contained no provision channeling funds to black colleges, most of which had neither graduate programs nor strong undergraduate programs in science and mathematics. As before, black colleges received practically no federal funds unless specifically included in the legislation.

In passing Title VI of the Civil Rights Act of 1964,[23] Congress similarly followed the pattern of the Morrill Act of 1890 by stating the legal standard for receipt of federal funds in broad terms and leaving the specifics of administration to the executive branch and the federal courts. Although it threatened to deny federal funds to programs which discriminated on the basis of race, Title VI attracted relatively little attention generally at the time it passed and even less scrutiny of its relationship to higher education. This was due to several factors. Amendments to deny federal funds to programs discriminating on the basis of race had been proposed or threatened by Rep. Adam Clayton Powell, Jr. (Dem.-N. Y.), with varying degrees of success, during the 1940s and 1950s,[24] and seemed to embody an important principle without administrative complexity. According to the limited definition of desegregation current in the early 1960s, most white state universities in the South had admitted at least one qualified black student and had thus "complied." Public attention in 1964 was directed to the public accommodations and equal employment provisions of the bill. Because it was viewed as civil rights legislation, rather than an education bill, college officials did not testify on the potential impact of Title VI; public school educators were concerned about Title IV and the issue of racial balance.

At the time the Civil Rights Act of 1964 was passed, the federal government was not yet involved in the financial support of higher education in a big way. By the time the NAACP Legal Defense Fund filed suit in 1970, however, to compel the Department of Health, Education and Welfare to enforce Title VI against state systems of higher education, both the involvement of the federal government in higher education and the definition of desegregation had undergone

major changes. The Higher Education Act of 1965[25] heralded the change in federal financial assistance with two provisions of particular concern to desegregation efforts. Educational opportunity grants up to $800 for financially needy students, in addition to federally supported work/study programs and subsidized loans, promised to increase access to higher education for large numbers of minority students. Title III funds to strengthen developing institutions promised to ensure at least some federal financial aid to traditionally black colleges.[26] Also, by the time Adams v. Richardson was filed, the power of Title VI to further desegregation in elementary and secondary schools had already been demonstrated. Furthermore, successful suits by the Legal Defense Fund had resulted in the 1968 Green decision by the Supreme Court which required the elimination of the racial identity of public schools.[27] Taken together, these developments suggested that the threat of withholding federal funds under Title VI could be used to force state systems of public higher education to eliminate the racial identity of state colleges and universities.

It is noteworthy that the Adams suit involved the distribution of federal funds to higher education in a negative rather than a positive sense. The suit did not seek a more equitable distribution of federal funds between white and black institutions, but sought action by the federal officials against state governments for inequalities persisting in higher education. Although federal aid is sometimes criticized for tempting educators to do what they might not have done otherwise, states were not offered the prospect of increased federal funding for progress in eliminating the vestiges of segregation in public higher education. Instead, states were

threatened with a cut-off of funding for failure to make progress in an area where neither the end nor the means was clearly defined.

As in the higher education cases before Brown, funding questions implicitly infused the whole course of the Adams litigation.[28] Once again, black public colleges were compared with white ones, and by tangible measures were found deficient in nearly every respect. Even in states where current operating expenditures had been equalized between black and white public colleges with comparable missions, historical inequities persisted in endowments and physical plants. As in earlier desegregation suits, plaintiffs sought initially a somewhat nebulous goal, "elimination of racial identifiability," as they had once sought "equality of educational opportunity" rather than measurable commitments of resources. The criteria issued in 1977 by the Department of Health, Education and Welfare for acceptable state higher education desegregation plans set goals in terms of outcome in changing enrollment and employment patterns but did not hold states to specific financial commitments to accomplish statewide desegregation goals.[29]

By the late 1970s, the relationship between federal aid and college desegregation had again experienced major changes in both areas. Although the Adams case did not include consideration of the impact of federal aid on state level desegregation in higher education, the speed and degree of progress were greatly enhanced by passage of the Education Amendments of 1972.[30] Enacted a year before the district court issued its first decision in the Adams case, the Amendments established the right of all qualified students to some form of postsecondary education. The amount of federal expenditures for higher education increased dramatically with the creation of

basic educational opportunity grants (BEOGs, later Pell Grants) up to $1,800, depending on student need, supplemented by campus-based supplemental grants, college work/study, and guaranteed student loans.[31] Whereas the Adams suit put new emphasis on the institutional aspects of desegregation, the Education Amendments of 1972 showed a clear congressional preference for aid to students rather than to institutions. While the Adams litigation stalled and fragmented, the number of students in higher education overall, and of black students in particular, expanded with the increased availability of federal funds.

Over the decade, the definition of desegregation expanded and changed, largely because of the involvement of black educators as friends of the court in the Adams case. In its briefs, the National Association for Equal Opportunity in Higher Education defined the central problem as one of access rather than of racial identifiability. Rather than shifting students or faculty, NAFEO proposed increasing the proportion of black students, faculty and administrators at every level and in every aspect of higher education.[32] This perspective, which was reflected in HEW's criteria, coincided with the basic philosophy behind Pell Grants, whereby federal aid would increase access to higher education for all needy students.

The other major tenet of NAFEO's position similarly coincided with the trend of federal funding efforts. NAFEO's belief in the unique historical role of black public colleges and the need to improve them for future service had already been embodied in Title III of the Higher Education Act of 1965. Ironically, the availability of federal grants for needy students, which dramatically increased the number and proportion of black students entering postsecondary education also decreased the number and proportion of black students

at historically black colleges. The Amended Criteria included the goal of improving offerings and facilities at black public colleges as a necessary first step to increase white enrollment on black campuses and to foster unitary systems of state-supported higher education.

Thus college level desegregation emerged from the litigation campaign of the 1970s with two distinct definitional parts which related to federal aid in different ways. Federal grants, loans and work/study opportunities for black undergraduate and graduate students are essential to increase the number and proportion of blacks involved in all aspects of higher education. Federal aid to historically black institutions is essential to overcome generations of unequal funding, to bring black colleges into the academic mainstream in terms of role and mission, and ultimately, to attract greater numbers of white students to black campuses. One of the beneficial results of the Adams suit has been the heightened visibility and political cohesiveness of black colleges. The danger remains, however, that federal aid to black colleges overall will not increase in any meaningful way, and that black students and black colleges will suffer disproportionately from cutbacks in student aid.

Every president since Richard Nixon has announced his appreciation for the historical role of black colleges and his intention to increase their share of federal monies. This is a politically popular ritual which avoids the infinitely more complex issues of access, governance, elimination of unnecessary program duplication, and affirmative action. The enhancement of black colleges is generally discussed in its own terms, not in

connection with efforts to attract more white students to traditionally black campuses or to eliminate racial identifiability in higher education.

Both the Carter and Reagan administrations have made gestures to increase the proportion of federal dollars going to black colleges and universities. President Carter issued both a memorandum and Executive Order No. 12232[33] to spur greater participation by black colleges in the broad range of federally-supported research and development programs. Because this effort was outside the regular budgetary process, however, its potential impact was negated. An unpublished report from the White House Black College Initiative in 1980 showed that the effort had produced negligible changes in the proportionate levels of funding.[34] President Reagan's Executive Order No. 12320, "Historically Black Colleges and Universities,"[35] weaves new strands of cynicism into this pattern. Replacing President Carter's similar order, it proclaims the federal government's interest in encouraging private contributions to black colleges, thus closing the circle from the Bureau of Education's 1917 report to foster private philanthropy.[36] Reagan's order puts oversight responsibility for black colleges in the Department of Education, which his administration hopes to abolish, and holds out the promise of an increased proportion of federal funds when all federal aid to higher education is being radically reduced.

The failure to make connections between federal aid and college desegregation can have unexpected consequences. Recent examples illustrate the necessity for those concerned with the well-being of black students and black colleges to see the interrelationship between issues and to anticipate the possible repercussions even of

ostensibly beneficial bills. Sponsors of Title III of the Higher Education Act of 1965 apparently intended that federal funds for developing institutions would largely go to historically black colleges. Although the black colleges have benefited from the funds,[37] they have also felt the pressure of community colleges which also benefit from the act. Two-year colleges have been praised for expanding black participation in higher education and criticized for luring students away from four-year institutions where black enrollment is disproportionately low.[38] In either case, the point remains that congressional supporters did not consider the likelihood or desirability of such an outcome. Confusion remains as to which institutions are currently eligible for this aid.[39]

Land-grant legislation, which is generally considered by congressional agriculture committees rather than by education committees, continues to affect the potential for desegregation of black and white land-grant institutions. In 1977, debate over the proposed Food and Agriculture Act[40] concentrated on the question of food stamps and glossed over provisions for expanded participation by the 1890 colleges in federally-supported cooperative extension programs and agricultural experiment stations. This section at least promised improved programs at the black land-grant colleges, an element deemed essential to desegregation efforts. Similarly, the Agriculture and Food Act of 1981[41] appropriated $50 million over several years to the 1890 colleges. Since provisions for black colleges usually run counter to the trend for higher education, it is not surprising that federal aid for black colleges, sought unsuccessfully for years, should be forthcoming when aid to higher education generally is evaporating. Caution characterized the recent

reaction of black educators to a bill proposed by Congressman Mickey Leland (Dem.-Tex.) to eliminate the separate-but-equal language of the 1890 Morrill Act. A similar bill,[42] introduced in 1979, died in committee. When reintroduced in 1981, with language to protect the funds of black land-grant colleges, the bill failed to get the support of the 1890 colleges, who feared any change in their status. Without their backing, Congressman Leland did not press for enactment.[43]

At a time when the level of federal funding to higher education and the commitment to civil rights enforcement efforts both are waning, it is important to examine the course of progress on both fronts from a historical perspective. Both the Morrill Act of 1890 and Title VI of the Civil Rights Act of 1964 fused the issues of federal aid and racial discrimination in higher education. Although the basic legal standards formulated in the Brown decision and the 1977 Amended Criteria for Acceptable State Higher Education Desegregation Plans remain in place, the extent to which the legal right can be exercised is crucially dependent on the kind and level of federal involvement. The federal government not only has defined the constitutional requirements and assumed responsibility for their enforcement, but has also affected the degree to which black colleges may actually offer high quality programs for all students and the extent to which black students may take full advantage of opportunities in public higher education. By examining the past interaction between college desegregation and federal aid, those concerned with maximizing educational choices for all students may be better able to consider legislative and judicial strategies for the coming decade.

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